

### **Remarks**

This communication is responsive to the Notice of Allowance issued on October 7, 2010. Entry of the present amendment is respectfully requested.

### **The Present Amendment**

37 CFR 1.312 and MPEP 714.16 allow an amendment to be made after a Notice of Allowance if it is filed before or with the payment of the issue fee. The present amendment is being filed before the payment of the issue fee.

### **Amendment to the Title to Fix PTO Error**

The title as shown on the Notice of Allowance is incorrect. The title was amended in a response filed August 16, 2004 (which was requested by the examiner). That amendment changed the title to read:

Methods of determining communications protocol latency

The response of August 16, 2004 was entered but the Patent Office did not change the title. The present amendment simply repeats the previous amendment to put the title to the correct version. Entry of the amendment is respectfully requested.

### **Amendment to the Claims**

The present amendment adds new claims 37-40, which are non-transitory Computer-Readable Medium (e.g. Beauregard) versions of allowed method claims. These claims were presented to Examiner Nguyen in a proposed amendment and discussed with the undersigned attorney on September 20, 2010. Claims 37-40 were accepted by the examiner but were not included in the Examiner's

Amendment. No reasons for their exclusion were provided thus it seems the claims were inadvertently excluded. Therefore, applicant repeats the claims here.

New claim 37 is a computer-readable medium claim that corresponds to allowed claim 1.

New claim 38 is a computer-readable medium claim that corresponds to allowed claim 1 but removes the abbreviations SYN and HTTP.

New claim 39 is a computer-readable medium claim that corresponds to allowed claim 15.

New claim 40 is a system claim of claim 38.

Entry of the present amendment prior to issuance is proper under 37 CFR 1.312 (see MPEP 714.16) because:

A. The amendment is necessary for proper protection of the invention because the inclusion of computer-readable medium claims 37-40 (e.g. Beauregard claims) supports a claim of direct infringement of the patent.

B. The new claims 37-40 require no additional search or examination because the claim elements correspond to the allowed method claims as indicate above with a new preamble corresponding to a well-accepted computer-readable medium claim.

C. The new claims 37-40 are patentable for at least the same reasons as the allowed claims.

D. The new claims 37-40 were presented earlier in proposed amendments submitted to Examiner Nguyen on September 20, 2010 via email. The amendments were discussed by phone with the undersigned attorney and Examiner Nguyen indicated that they were acceptable. However when the Notice of Allowance was received, the Notice did not include claims 37-40. Thus applicant was not aware that the claims were not added until now.

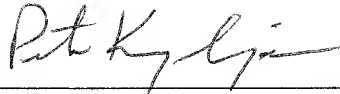
### **Conclusion**

For the reasons set forth above, the claims remain in condition for allowance. An entry of the new claims into the application resulting in the issuance of a patent that includes the new claims is earnestly solicited.

Respectfully submitted,

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Date



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